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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

AILEEN LOVE, Warden, and
WILLIAM M. LEECH, JR., Attorney General,
Petitioners,

vs.

WILLIAM EARL STACY,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Sixth Circuit in granting the writ of habeas corpus misapplied *Jackson* v. *Virginia* by rejecting evidence which, if believed, would support the finding of a rational trier of fact beyond a reasonable doubt that the respondent was sane at the time of the offense?

2. Whether proof of sanity should be reviewed under the standard of *Jackson* v. *Virginia* when sanity is not an element of the offense but must be proved beyond a reasonable doubt only after prima facie evidence of insanity is introduced?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was rendered on June 8, 1982. It is reported as *Stacy* v. *Love,* 679 F.2d 1209 (6th Cir. 1982), and is attached as Appendix A.

The opinion of the United States District Court of the Middle District of Tennessee was rendered on March 31, 1981. It is reported as *Stacy* v. *Love,* 528 F.Supp. 38 (M.D. Tenn. 1981) and is attached as Appendix B.

The opinion of the Tennessee Supreme Court on the direct appeal of Mr. Stacy's conviction was rendered on June 30, 1980. It is reported as *State* v. *Stacy*, 601 S.W.2d 696 (Tenn. 1980) and is attached as Appendix C.

The opinion of the Court of Criminal Appeals of Tennessee on the direct appeal of Mr. Stacy's conviction was rendered on February 5, 1979. It is unreported and is attached as Appendix D.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the Court of Appeals for the Sixth Circuit was entered on June 3, 1982. No rehearing was sought in that court nor has any extension of time in which to file this petition been sought in this Court.

The provisions of 28 U.S.C. 1254(1) are believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, §9, cl.2:

> The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

U.S. Const. amend. XIV, §1:

> No state . . . shall . . . deprive any person of life, liberty, or property, without due process of law;

28 U.S.C. §2241(a):

> Writs of heabeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

28 U.S.C. §2254(a):

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

T.C.A. §39-2401 (1975):

> If any person of sound memory and discretion, unlawfully kill any reasonable creature in being, and under the peace of the state, with malice aforethought, either express or implied, such person shall be guilty of murder.

T.C.A. §39-2402(1) (1975) provides in pertinent part:

> An individual commits murder in the first degree if he commits a willful, deliberate, malicious and premeditated killing or murder.

STATEMENT OF THE CASE

William Earl Stacy was convicted, after a jury trial, of first-degree murder and sentenced to life imprisonment. Mr. Stacy was found guilty of the fatal shooting of a Greyhound bus ticket agent during the course of a robbery committed by Mr. Stacy

and another robber. Strongly contested at the trial were both the ability of Mr. Stacy to appreciate the wrongfulness of his conduct and also his ability to conform his conduct to the requirements of the law.[1]

A three judge panel of the Court of Criminal Appeals of Tennessee unanimously affirmed the conviction. See, for full opinion Appendix D.

The Tennessee Supreme Court granted a petition for the writ of certiorari filed by Mr. Stacy "to consider the sufficiency of the convicting evidence in light of petitioner's[2] defense of lack of mental capacity." *State* v. *Stacy,* 601 S.W.2d 696 (Tenn. 1980). That court, two judges dissenting, agreed with the jury, the trial judge, and the panel of the Court of Criminal Appeals that Mr. Stacy was not insane under Tennessee law. See, for full opinion, Appendix C.

Mr. Stacy next filed the present petition for the writ of habeas corpus[3] in the United States District Court for the Middle District of Tennessee. Chief Judge Morton of that court, after re-evaluating the same evidence, determined that the evidence of Mr. Stacy's ability to conform his conduct to the requirements of the law was insufficient for a rational trier of fact to find sanity beyond a reasonable doubt.[4] Therefore, he granted the writ. A panel of the United States Court of Appeals for the Sixth Circuit, one judge dissenting, affirmed. *See* for full opinion, Appendix A.

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[1] These are the last two prongs of the three pronged test for insanity in Tennessee. It is admitted that Mr. Stacy has "a mental disease or defect," the first prong of the test. *See,* generally, *Graham* v. *State,* 547 S.W.2d 531 (Tenn. 1977).

[2] Mr. Stacy, the present respondent.

[3] 28 U.S.C. §2254.

[4] *See Jackson* v. *Virginia,* 443 U.S. 307

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I.

The Lower Courts' Decisions Conflict With *Jackson v. Virginia*, 433 U.S. 307 (1979).

The standard of evidence in federal habeas corpus proceedings under 28 U.S.C. §2254 was stated by this Court in *Jackson* v. *Virginia*, 443 U.S. 307, 319 (1979) as follows:

> Whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (Court's emphasis).

This Court went on to find that this standard

> gives full play to the responsibility of the trier of fact [in this case the jury] fairly to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the fact finder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution.

The Court made clear that inquiry required under this standard does not allow a reviewing court to "ask whether *it* believes that the evidence of a trial establishes guilt beyond a reasonable doubt." (Court's emphasis). 443 U.S. at 318.

In determining whether or not the prosecution in the state trial of the instant case proved sanity beyond a reasonable doubt, reference must be made to the Tennessee law on sanity. *Moore* v. *Duckworth*, 443 U.S. 713 (1979). Under Tennessee

law, as set forth in *Graham* v. *State*, 547 S.W.2d 531 (Tenn. 1977), a person is not responsible for his criminal conduct.

> if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Id. at 543. The defendant is presumed sane. *Pyburn* v. *State*, 539 S.W.2d 835, 839 (Tenn. Crim. App. 1976). When there is evidence tending to show that a person charged with a crime was insane at the time of the commission of the offense, the burden is on the State to prove that the person had the capacity to appreciate the wrongfulness of his conduct and the ability to conform his conduct to the requirements of law. *State* v. *Patton*, 593 S.W.2d 913, 915 (Tenn. 1979); *Graham, supra*, 547 S.W.2d at 544. When the record shows that a defendant is suffering from a cyclical or periodic mental disease such as schizophrenia, the defendant must show that he was not in remission at the time of the offense before the burden shifts to the State. *See, Forbes* v. *State*, 559 S.W.2d 318, 328-329 (Tenn. 1977).

Under Tennessee law, the State may meet the burden of proving sanity through the introduction of expert testimony on the issue, through lay testimony where a proper foundation for the opinion has been laid, or through the showing of acts or statements of the petitioner at or very near the time of the commission of the crime, which are consistent with sanity. *State* v. *Patton*, 593 S.W.2d 913, 915 (Tenn. 1979); *Edwards* v. *State*, 540 S.W.2d 641, 646 (Tenn. 1976). Where testimony as to the facts permit even an inference that the defendant was sane at the time of the offense charged, the jury is entitled to reject both expert and lay opinion testimony to the contrary. *Pyburn, supra*, 539 S.W.2d at 840.

The Sixth Circuit held that the State failed to meet the requirements of *Jackson* in that a rational trier of fact could not

have concluded from the evidence that the respondent, under the second prong of the *Graham* test, could conform his conduct to the requirements of the law. That a rational trier of fact could and did find the evidence sufficient to prove the respondent's ability to conform his conduct to the requirements of law is best illustrated by the opinion of the Tennessee Supreme Court in *State* v. *Stacy*, 601 S.W.2d 696 (Tenn. 1980), which, states in pertinent part, as follows:

> This case involved a planned, deliberate robbery and a murder committed by petitioner in the perpetration of it. Petitioner was driven to the scene of the crime by two other persons. Neither of these individuals claimed mental illness or inability to control his conduct. In the course of attempting to commit the robbery, petitioner shot and killed the intended victim. He was aware of what he had done immediately thereafter, recognized that he had killed the victim, and actively sought to avoid apprehension by the police. He was successful in doing so, even though his two companions were not. Petitioner evaded capture for several weeks. The offense occurred in Knoxville. Petitioner came to Nashville and was seen there on several occasions by persons who had known him previously. He recognized these persons and recalled past events in conversations with them.
>
> Petitioner had a fairly short history of mental illness, dating, not from his childhood, but for a period of about one year prior to the crime in question. There is evidence that he was highly intelligent. It is conceded by counsel for petitioner that there was sufficient evidence to make a jury issue in this case as to whether the accused did or did not appreciate the wrongfulness of his conduct.
>
> Reversal is sought on the other prong of the rules of criminal responsibility as stated in *Graham* v. *State*, 547

S.W.2d 531 (Tenn. 1977); that is, inability of petitioner to control his conduct.

In the opinion of the majority, that issue, like the issue of cognitive capacity, was a question of fact to be determined by the jury. There was evidence that the accused, when he had been removed from medication for a considerable period of time, became completely irrational. At the time of the homicide, however, he had been without medication for only a short period of time, if at all, and his conduct on or about the time of the murder does not compare even remotely with the conduct described when he was totally psychotic or out of touch with reality. In our opinion, it was for the jury to determine whether petitioner could or could not control his conduct. If he could not control it at the time when he committed the shooting a few hours earlier, it is difficult to conceive that he could have effectively escaped from a wrecked vehicle and eluded captivity for weeks thereafter—or, at least, a trier of fact might reasonably so conclude from the proof.

The jurors in this case were given full instructions on the rules of ciminal responsibility pursuant to *Graham* v. *State, supra*. Presumably the facts were fully argued to them, as they were to this Court. The jury and the trial judge, all of whom saw and observed the witnesses, concluded that the accused was not incompetent within the *Graham* rules, and in our opinion there was ample material evidence to support that conclusion.

Petitioner's case has been before the appellate courts on another occasion. *See State* v. *Stacy*, 556 S.W.2d 552 (Tenn. Crim. App. 1977). His drug therapy was discussed in that case. It is clear both from that opinion and from the record in the present case that his ability to control his conduct varied with the degree and extent of medication which

he received and the length of time he was without it. In our opinion, it was for the jury to say whether or not, at the time of the homicide, he had been without medication for a sufficiently long period of time to be unable to control his conduct. The fact that he was seen in Nashville a substantial period of time later and recognized and conversed with persons whom he knew, apparently in control of himself, is evidence from which the jury could have concluded that petitioner was not psychotic or out of control at the time of the homicide involved here.

The testimony of experts offered on behalf of petitioner was opinion evidence only. Its weight and credibility were clearly issues to be determined by the jury under appropriate instructions from the trial judge. One of these witnesses, Dr. Luton, did not see petitioner until April 1976, over eight months after the homicide in question. The other, Dr. Siegmann, had observed him during the years 1974 and 1975. He testified that on July 1, 1975, petitioner was discharged from the Forensic Services Unit as being improved. At that time petitioner was on medication. Thereafter he was in custody and in the Eastern State Hospital until July 23, 1975. Dr. Siegmann testified that if petitioner discontinued his medication, his condition "would disintegrate relatively soon again." It was for the jury, in our opinion, to say what "relatively soon" meant and to determine whether the petitioner's condition had deteriorated by July 30, 1975, the date of the crime, and the extent of such deterioration, if any. He was out of the hospital and without supervision for only seven days before the murder was committed. Dr. Siegmann did not see petitioner again after July 1 until March 9, 1976, over seven months after the homicide. He expressed the opinion that the accused could appreciate the wrongfulness of his conduct at the time of the crime but that petitioner could

not control that conduct or conform it to the requirements of the law. He described the conduct of petitioner when he was in a state of disintegration. The jury was entitled to compare that conduct with the demeanor of the petitioner at or about the time of the robbery and homicide. Further, Dr. Siegmann testified positively that petitioner is not mentally retarded and that his intelligence is well above the average range.

In this Court, the evidence must be viewed in its strongest light favorable to the verdict. It is not the function of this Court to draw inferences from testimony in jury cases. That is the province of the jury whose verdict, in our opinion, was justified from the evidence in the record.

In reaching a contrary conclusion, the majority opinion for the Sixth Circuit relies upon the expert and lay testimony introduced by the respondent on the issue of insanity. There is, of course, no question that the respondent introduced evidence which, *if believed,* would justify a verdict of not guilty beyond a reasonable doubt. But, as this Court pointed out in *Jackson* and recently reiterated in *Tibbs* v. *Florida,* _____U.S._____, 102 S.Ct. 2211, 2220 f.n.21 (1982), the issue before a federal court considering a habeas corpus petition is whether the evidence *favorable to the prosecution,* if believed, is sufficient to support the verdict of the trier of fact.

Perhaps recognizing this difficulty in its analysis, the majority opinion of the Sixth Circuit further held that the evidence cited by the Tennessee Supreme Court simply does not form "a basis for upholding Stacy's conviction." 679 F2d at 1214. Again, a rational trier of fact might conclude from the evidence cited by the Tennessee Supreme Court in conjunction with the expert testimony offered by the respondent that the respondent did not have the capacity to conform his conduct to the requirements of the law. But, as evidenced by the findings of the twelve jurors,

the three judges of the Court of Criminal Appeals of Tennessee, the three-justice majority of the Supreme Court, as well as the dissenting judge on the United States Court of Appeals for the Sixth Circuit, a rational trier of fact could also conclude from this evidence that the respondent was capable of conforming his conduct to the requirements of the law. The petitioner respectfully submits that the majority opinion of the Sixth Circuit does nothing more than re-weigh the evidence offered by the State to prove sanity. It ignores the clear teaching of *Jackson* that it is the responsibility of the trier of fact, not the appellate courts, "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson, supra,* 443 U.S. at 2789; *see, also, Tibbs* v. *Florida, supra,* 102 S.Ct. at 2220 f.n.21.

The petitioner is aware that this Court does not sit as a court of error in federal habeas corpus proceedings. As Judge Weick of the Sixth Circuit indicates in his dissenting opinion, however, this case is not the first in which a panel of the Sixth Circuit has evinced a fundamental misunderstanding of the application of the principals set forth in *Jackson* v. *Virginia. See, Fuller* v. *Anderson,* 662 F2d 420 (6th Cir. 1981), *cert denied,* _____ U.S. _____, 102 S.Ct. 1734, 72 L.Ed.2d 150 (1982). The continued misapplication of the *Jackson* principles justifies this Court in granting this petition.

II.

Proof Of Sanity Under Tennessee Law Is Not An Essential Element Of The Crime For The Purposes Of *Jackson v. Virginia,* 433 U.S. 307 (1979).

This case also raises the important question of whether proof of sanity in a criminal prosecution, where sanity is not an element of the offense comes within the ambit of *Jackson* v. *Virginia.* The Sixth Circuit noted that the State did not have to

assume the burden of proving insanity, *Leland* v. *Oregon*, 343 U.S. 790 (1952). Having assumed that burden, however, proof of sanity became an essential element of the crime. In *Engle* v. *Isaac*, _____ U.S. _____, 102 S.Ct. 1558 (1982), this Court rejected the notion "that whenever a State requires the prosecution to prove a particular circumstance beyond a reasonable doubt, it has invariably defined that circumstance as an element of the crime." 102 S.Ct. at 1567. This Court went on to say that a State may require the prosecution to disprove an affirmative defense "without also designating absence of the defense an element of the crime." *Id.*

Under Tennessee law, insanity is denominated a defense to a criminal prosecution. *State* v. *Graham, supra*, 547 S.W.2d at 544. The State is not required to introduce evidence of sanity in order for the State's case to reach the jury. Rather, the burden of proving sanity beyond a reasonable doubt does not shift to the State unless evidence is adduced raising a reasonable doubt as to sanity, *Id.*

The Sixth Circuit, therefore, erred in reviewing the evidence supporting the sanity of the respondent under the *Jackson* standard. This Court, of course, has never held that the due process clause invalidates state laws placing the burden on the defendant to prove insanity. *Patterson* v. *New York*, 432 U.S. 197, 204-205 (1977); *Rivera* v. *Delaware*, 429 U.S. 877 (1976); *Leland* v. *Oregon, supra.*

The question of whether federal courts in habeas corpus cases can review state court determinations of sanity under the standards set forth in *Jackson* v. *Virginia* is one of paramount importance which this Court has not specifically addressed. The reasoning of this Court in *Engle* v. *Isaac, supra*, and *Patterson* v. *New York, supra*, clearly points to the conclusion that *Jackson* is inapplicable. As evidenced by the opinion of the Sixth Circuit in the instant case, however, federal courts of appeals are rejecting the reasoning of *Engle* and *Patterson*.

CONCLUSION

For the reasons stated, petitioners urge the Court to grant the writ of certiorari.

Respectfully submitted,

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